

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:96CV01285
)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior,)	
<u>et al.</u> ,)	
)	
Defendants.)	
_____)	

NOTICE OF FILING OF AMERICAN INDIAN PROBATE REFORM ACT OF 2004

Defendants hereby give notice of the filing of the text of the American Indian Probate Reform Act of 2004, Pub. Law No. 108-374, 118 Stat. 1773 (2004), which was signed into law by the President on October 27, 2004. A copy of the statute is attached hereto.

During the status conference held before the Court on October 19, 2004, the Court directed Defendants to file a copy of the legislation once it was signed into law. Tr. at 43-44, 65-66 (Oct. 19, 2004). Among other things, section 8 of the act requires the Secretary of the Interior to provide notice to "Indian tribes and owners of trust or restricted lands of the amendments made" by the act within 180 days of its enactment. That notice must be written and must be distributed by direct mail and other means.

None of the communications required by the new statute are, or should be, subject to the communications prohibitions or notice requirements of this Court's Orders of December 23, 2002, September 29, 2004 or October 1, 2004, respectively, because (1) the substantive statutory mandates of Congress are superior to and cannot be regulated by any procedural requirement imposed pursuant to Rule 23(d) of the Federal Rules of Civil Procedure; (2) Defendants' discharge of their statutory duties are in the "ordinary course of business"; and (3) the act does

not purport to terminate or otherwise impair any rights of any class member to an accounting in this case.

Dated: November 9, 2004

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Associate Attorney General
PETER D. KEISLER
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director
SANDRA P. SPOONER
D.C. Bar No. 261495
Deputy Director

/s/ Michael J. Quinn
JOHN T. STEMPLEWICZ
Senior Trial Attorney
MICHAEL J. QUINN
Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194
(202) 514-9163 (fax)

CERTIFICATE OF SERVICE

I hereby certify that, on November 9, 2004 the foregoing *Notice of Filing of American Indian Probate Reform Act of 2004* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
Fax (406) 338-7530

/s/ Kevin P. Kingston
Kevin P. Kingston

Copr. © 2004 West. No Claim to Orig. U.S. Govt. Works.

PL 108-374, 2004 S 1721

PL 108-374, October 27, 2004, 118 Stat 1773

(Cite as: 118 Stat 1773)

**UNITED STATES PUBLIC LAWS
108th Congress - Second Session
Convening January 7, 2004**

Copr. © West Group 2004. No Claim to Orig. U.S. Govt. Works

Additions and Deletions are not identified in this database.
Vetoed provisions within tabular material are not displayed

PL 108-374 (S 1721)

October 27, 2004

AMERICAN INDIAN PROBATE REFORM ACT OF 2004

An Act To amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States
of America in Congress assembled,

<< 25 USCA § 2201 NOTE >>

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Indian Probate Reform Act of 2004".

<< 25 USCA § 2201 NOTE >>

SEC. 2. FINDINGS.

Congress finds that--

(1) the Act of February 8, 1887 (commonly known as the "Indian General Allotment Act") (25 U.S.C. 331 et seq.), which authorized the allotment of Indian reservations, did not permit Indian allotment owners to provide for the testamentary disposition of the land that was allotted to them;

(2) that Act provided that allotments would descend according to State law of intestate succession based on the location of the allotment;

(3) the reliance of the Federal Government on the State law of intestate succession with respect to the descent of allotments has resulted in numerous problems affecting Indian tribes, members of Indian tribes, and the Federal Government, including--

(A) the increasingly fractionated ownership of trust and restricted land as that land is inherited by successive generations of owners as tenants in common;

(B) the application of different rules of intestate succession to each interest of a decedent in or to trust or restricted land if that land is located within the boundaries of more than 1 State, which application--

(i) makes probate planning unnecessarily difficult; and

(ii) impedes efforts to provide probate planning assistance or advice;

(C) the absence of a uniform general probate code for trust and restricted land, which makes it difficult for Indian tribes to work cooperatively to develop tribal probate codes; and

(D) the failure of Federal law to address or provide for many of the essential elements of general probate law, either directly or by reference, which--

(i) is unfair to the owners of trust and restricted land (and heirs and devisees of owners); and

*1774 (ii) makes probate planning more difficult;

(4) a uniform Federal probate code would likely--

(A) reduce the number of fractionated interests in trust or restricted land;

(B) facilitate efforts to provide probate planning assistance and advice and create incentives for owners of trust and restricted land to engage in estate planning;

(C) facilitate intertribal efforts to produce tribal probate codes in accordance with section 206 of the Indian Land Consolidation Act (25 U.S.C. 2205); and

(D) provide essential elements of general probate law that are not applicable on the date of enactment of this Act to interests in trust or restricted land; and

(5) the provisions of a uniform Federal probate code and other forth in this Act should operate to further the policy of the United States as stated in the Indian Land Consolidated Act Amendments of 2000, Public Law 106-462, 102, November 7, 2000, 114 Stat. 1992.

SEC. 3. INDIAN PROBATE REFORM.

<< 25 USCA § 2206 >>

(a) NONTESTAMENTARY DISPOSITION.--Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by striking subsection (a) and inserting the following:

"(a) NONTESTAMENTARY DISPOSITION.--

"(1) RULES OF DESCENT.--Subject to any applicable Federal law relating to the devise or descent of trust or restricted property, any trust or restricted interest in land or interest in trust personalty that is not disposed of by a valid will--

"(A) shall descend according to an applicable tribal probate code approved in accordance with section 206; or

"(B) in the case of a trust or restricted interest in land or interest in trust personalty to which a tribal probate code does not apply, shall descend in accordance with--

"(i) paragraphs (2) through (5); and

"(ii) other applicable Federal law.

"(2) RULES GOVERNING DESCENT OF ESTATE.--

"(A) SURVIVING SPOUSE.--If there is a surviving spouse of the decedent, such spouse shall receive trust and restricted land and trust personalty in the estate as follows:

"(i) If the decedent is survived by 1 or more eligible heirs described in subparagraph (B) (i), (ii), (iii), or (iv), the surviving spouse shall receive 1/3 of the trust personalty of the decedent and a life estate without regard to waste in the interests in trust or restricted lands of the decedent.

"(ii) If there are no eligible heirs described in subparagraph (B) (i), (ii), (iii), or (iv), the surviving spouse shall receive all of the trust personalty of the decedent and a life estate without regard to waste in the trust or restricted lands of the decedent.

"(iii) The remainder shall pass as set forth in subparagraph (B).

"(iv) Trust personalty passing to a surviving spouse under the provisions of this subparagraph shall be maintained by the Secretary in an account as trust personalty, but only if such spouse is Indian.

***1775** "(B) INDIVIDUAL AND TRIBAL HEIRS.--Where there is no surviving spouse of the decedent, or there is a remainder interest pursuant to subparagraph (A), the trust or restricted estate or such remainder shall, subject to subparagraphs (A) and (D), pass as follows:

"(i) To those of the decedent's children who are eligible heirs (or if 1 or more of such children do not survive the decedent, the children of any such deceased child who are eligible heirs, by right of representation, but only if such children of the deceased child survive the decedent) in equal shares.

"(ii) If the property does not pass under clause (i), to those of the decedent's surviving great-grandchildren who are eligible heirs, in equal shares.

"(iii) If the property does not pass under clause (i) or (ii), to the decedent's surviving parent who is an eligible heir, and if both parents survive the decedent and are both eligible heirs, to both parents in equal shares.

"(iv) If the property does not pass under clause (i), (ii), or (iii), to those of the decedent's surviving siblings who are eligible heirs, in equal shares.

"(v) If the property does not pass under clause (i), (ii), (iii), or (iv), to the Indian tribe with jurisdiction over the interests in trust or restricted lands;

except that notwithstanding clause (v), an Indian co-owner (including the Indian tribe referred to in clause (v)) of a parcel of trust or restricted land may acquire an interest that would otherwise descend under that clause by paying into the estate of the decedent, before the close of the probate of the estate, the fair market value of the interest in the land; if more than 1 Indian co-owner offers to pay for such interest, the highest bidder shall acquire the interest.

"(C) NO INDIAN TRIBE.--

"(i) IN GENERAL.--If there is no Indian tribe with jurisdiction over the interests in trust or restricted lands that would otherwise descend under subparagraph (B)(v), then such interests shall be divided equally among co-owners of trust or restricted interests in the parcel; if there are no such co-owners, then to the United States, provided that any such interests in land passing to the United States under this subparagraph shall be sold by the Secretary and the proceeds from such sale deposited into the land acquisition fund established under section 216 (25 U.S.C. 2215) and used for the purposes described in subsection (b) of that section.

"(ii) CONTIGUOUS PARCEL.--If the interests passing to the United States under this subparagraph are in a parcel of land that is contiguous to another parcel of trust or restricted land, the Secretary shall give the owner or owners of the trust or restricted interest in the contiguous parcel the first opportunity to purchase the interest at not less than fair market value determined in accordance with this Act. If more than ***1776** 1 such owner in the contiguous parcel request to purchase the parcel, the Secretary shall sell the parcel by public auction or sealed bid (as determined by the Secretary) at not less than fair market value to the owner of a trust or restricted interest in the contiguous parcel submitting the highest bid.

"(D) INTESATE DESCENT OF SMALL FRACTIONAL INTERESTS IN LAND.--

"(i) GENERAL RULE.--Notwithstanding subparagraphs (A) and (B), and subject to any applicable Federal law, any trust or restricted interest in land in the decedent's estate that is not disposed of by a valid will and represents less than 5 percent of the entire undivided ownership of the parcel of land of which such interest is a part, as evidenced by the decedent's estate inventory at the time of the heirship determination, shall descend in accordance with clauses (ii) through (iv).

"(ii) SURVIVING SPOUSE.--If there is a surviving spouse, and such spouse was residing on a parcel of land described in clause (i) at the time of the decedent's death, the spouse shall receive a life estate without regard to waste in the decedent's trust or restricted interest in only such parcel, and the remainder interest in that parcel shall pass in accordance with clause (iii).

"(iii) SINGLE HEIR RULE.--Where there is no life estate created under clause (ii) or there is a remainder interest under that clause, the trust or restricted interest or remainder interest that is subject to this subparagraph shall descend, in trust or restricted status, to--

"(I) the decedent's surviving child, but only if such child is an eligible heir; and if 2 or more surviving children are eligible heirs, then to the oldest of such children;

"(II) if the interest does not pass under subclause (I), the decedent's surviving grandchild, but only if such grandchild is an eligible heir; and if 2 or more surviving grandchildren are eligible heirs, then to the oldest of such grandchildren;

"(III) if the interest does not pass under subclause (I) or (II), the decedent's surviving great grandchild, but only if such great grandchild is an eligible heir; and if 2 or more surviving great grandchildren are eligible heirs, then to the oldest of such great grandchildren;

"(IV) if the interest does not pass under subclause (I), (II), or (III), the Indian tribe with jurisdiction over the interest; or

"(V) if the interest does not pass under subclause (I), (II), or (III), and there is no such Indian tribe to inherit the property under subclause (IV), the interest shall be divided equally among co-owners of trust or restricted interests in the parcel; and if there are no such co-owners, then to the United States, to be sold, and the proceeds from *1777 sale used, in the same manner provided in subparagraph (C).

The determination of which person is the oldest eligible heir for inheritance purposes under this clause shall be made by the Secretary in the decedent's probate proceeding and shall be consistent with the provisions of this Act.

"(iv) EXCEPTIONS.--Notwithstanding clause (iii)--

"(I)(aa) the heir of an interest under clause (iii), unless the heir is a minor or incompetent person, may agree in writing entered into the record of the decedent's probate proceeding to renounce such interest, in trust or restricted status, in favor of--

"(AA) any other eligible heir or Indian person related to the heir by blood, but in any case never in favor of more than 1 such heir or person;

"(BB) any co-owner of another trust or restricted interest in such parcel of land; or

"(CC) the Indian tribe with jurisdiction over the interest, if any; and

"(bb) the Secretary shall give effect to such agreement in the distribution of the interest in the probate proceeding; and

"(II) the governing body of the Indian tribe with jurisdiction over an interest in trust or restricted land that is subject to the provisions of this subparagraph may adopt a rule of intestate descent applicable to such interest that differs from the order of decedent set forth in clause (iii). The Secretary shall apply such rule to the interest in

distributing the decedent's estate, but only if--

"(aa) a copy of the tribal rule is delivered to the official designated by the Secretary to receive copies of tribal rules for the purposes of this clause;

"(bb) the tribal rule provides for the intestate inheritance of such interest by no more than 1 heir, so that the interest does not further fractionate;

"(cc) the tribal rule does not apply to any interest disposed of by a valid will;

"(dd) the decedent died on or after the date described in subsection (b) of section 8 of the American Indian Probate Act of 2004, or on or after the date on which a copy of the tribal rule was delivered to the Secretary pursuant to item (aa), whichever is later; and

"(ee) the Secretary does not make a determination within 90 days after a copy of the tribal rule is delivered pursuant to item (aa) that the rule would be unreasonably difficult to administer or does not conform with the requirements in item (bb) or (cc).

"(v) RULE OF CONSTRUCTION.--This subparagraph shall not be construed to limit a person's right to ***1778** devise any trust or restricted interest by way of a valid will in accordance with subsection (b).

"(3) RIGHT OF REPRESENTATION.--If, under this subsection, all or any part of the estate of a decedent is to pass to children of a deceased child by right of representation, that part is to be divided into as many equal shares as there are living children of the decedent and pre-deceased children who left issue who survive the decedent. Each living child of the decedent, if any, shall receive 1 share, and the share of each pre-deceased child shall be divided equally among the pre-deceased child's children.

"(4) SPECIAL RULE RELATING TO SURVIVAL.--In the case of intestate succession under this subsection, if an individual fails to survive the decedent by at least 120 hours, as established by clear and convincing evidence--

"(A) the individual shall be deemed to have predeceased the decedent for the purpose of intestate succession; and

"(B) the heirs of the decedent shall be determined in accordance with this section.

"(5) STATUS OF INHERITED INTERESTS.--Except as provided in paragraphs (2) (A) and (D) regarding the life estate of a surviving spouse, a trust or restricted interest in land or trust personalty that descends under the provisions of this subsection shall vest in the heir in the same trust or restricted status as such interest was held immediately prior to the decedent's death."

<< 25 USCA § 2206 >>

(b) TESTAMENTARY DISPOSITION.--Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by striking subsection (b) and inserting the following:

"(b) TESTAMENTARY DISPOSITION.--

"(1) GENERAL DEVISE OF AN INTEREST IN TRUST OR RESTRICTED LAND.--

"(A) IN GENERAL.--Subject to any applicable Federal law relating to the devise or descent of trust or restricted land, or a tribal probate code approved by the Secretary in accordance with section 206, the owner of a trust or restricted interest in land may devise such interest to--

"(i) any lineal descendant of the testator;

"(ii) any person who owns a preexisting undivided trust or restricted interest in the same parcel of land;

"(iii) the Indian tribe with jurisdiction over the interest in land; or

"(iv) any Indian;

in trust or restricted status.

"(B) RULES OF INTERPRETATION.--Any devise of a trust or restricted interest in land pursuant to subparagraph (A) to an Indian or the Indian tribe with jurisdiction over the interest shall be deemed to be a devise of the interest in trust or restricted status. Any devise of a trust or restricted interest in land to a person who is only eligible to be a devisee under clause (i) or (ii) of subparagraph (A) shall be presumed to be a devise of the interest in trust or restricted status unless language in such devise clearly evidences an intent on the part of the testator that the interest is to pass as a life estate or fee interest in accordance with paragraph (2)(A).

***1779 "(2) DEVISE OF TRUST OR RESTRICTED LAND AS A LIFE ESTATE OR IN FEE.--**

"(A) IN GENERAL.--Except as provided under any applicable Federal law, any trust or restricted interest in land that is not devised in accordance with paragraph (1)(A) may be devised only--

"(i) as a life estate to any person, with the remainder being devised only in accordance with subparagraph (B) or paragraph (1); or

"(ii) except as provided in subparagraph (B), as a fee interest without Federal restrictions against alienation to any person who is not eligible to be a devisee under clause (iv) of paragraph (1)(A).

"(B) INDIAN REORGANIZATION ACT LANDS.--Any interest in trust or restricted land that is subject to section 4 of the Act of June 18, 1934 (25 U.S.C. 464), may be devised only in accordance with--

"(i) that section;

"(ii) subparagraph (A)(i); or

"(iii) paragraph (1)(A);

provided that nothing in this section or in section 4 of the Act of June 18, 1934 (25 U.S.C. 464), shall be construed to authorize the devise of any interest in trust or restricted land that is subject to section 4 of that Act to any person as a fee interest under subparagraph (A)(ii).

"(3) GENERAL DEVISE OF AN INTEREST IN TRUST PERSONALTY.--

"(A) TRUST PERSONALTY DEFINED.--The term 'trust personality' as used in this section includes all funds and securities of any kind which are held in trust in an individual Indian money account or otherwise supervised by the Secretary.

"(B) IN GENERAL.--Subject to any applicable Federal law relating to the devise or descent of such trust personality, or a tribal probate code approved by the Secretary in accordance with section 206, the owner of an interest in trust personality may devise such an interest to any person or entity.

"(C) MAINTENANCE AS TRUST PERSONALTY.--In the case of a devise of an interest in trust personality to a person or Indian tribe eligible to be a devisee under paragraph (1)(A), the Secretary shall maintain and continue to manage such interests as trust personality.

"(D) DIRECT DISBURSEMENT AND DISTRIBUTION.--In the case of a devise of an interest in trust personality to a person or Indian tribe not eligible to be a devisee under paragraph (1)(A), the Secretary shall directly disburse and distribute such personality to the devisee.

"(4) INVALID DEVISES AND WILLS.--

"(A) LAND.--Any trust or restricted interest in land that is not devised in accordance with paragraph (1) or (2) or that is not disposed of by a valid will shall descend in accordance with the applicable law of intestate succession as provided for in subsection (a).

"(B) PERSONALTY.--Any trust personalty that is not disposed of by a valid will shall descend in accordance *1780 with the applicable law of intestate succession as provided for in subsection (a).".

<< 25 USCA § 2206 >>

(c) JOINT TENANCY; RIGHT OF SURVIVORSHIP.--Section 207(c) of the Indian Land Consolidation Act (25 U.S.C. 2206(c)) is amended by striking all that follows the heading, "Joint Tenancy; Right of Survivorship", and inserting the following:

"(1) PRESUMPTION OF JOINT TENANCY.--If a testator devises trust or restricted interests in the same parcel of land to more than 1 person, in the absence of clear and express language in the devise stating that the interest is to pass to the devisees as tenants in common, the devise shall be presumed to create a joint tenancy with the right of survivorship in the interests involved.

"(2) EXCEPTION.--Paragraph (1) shall not apply to any devise of an interest in trust or restricted land where the will in which such devise is made was executed prior to the date that is 1 year after the date on which the Secretary publishes the certification required by section 8(a)(4) of the American Indian Probate Reform Act of 2004."

<< 25 USCA § 2206 >>

(d) RULE OF CONSTRUCTION.--Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by adding at the end the following:

"(h) APPLICABLE FEDERAL LAW.--

"(1) IN GENERAL.--Any references in subsections (a) and (b) to applicable Federal law include--

"(A) Public Law 91-627 (84 Stat. 1874);

"(B) Public Law 92-377 (86 Stat. 530);

"(C) Public Law 92-443 (86 Stat. 744);

"(D) Public Law 96-274 (94 Stat. 537); and

"(E) Public Law 98-513 (98 Stat. 2411).

"(2) NO EFFECT ON LAWS.--Nothing in this Act amends or otherwise affects the application of any law described in paragraph (1), or any other Federal law that pertains to--

"(A) trust or restricted land located on 1 or more specific Indian reservations that are expressly identified in such law; or

"(B) the allotted lands of 1 or more specific Indian tribes that are expressly identified in such law.

"(i) RULES OF INTERPRETATION.--In the absence of a contrary intent, and except as otherwise provided under this Act, applicable Federal law, or a tribal probate code approved by the Secretary pursuant to section 206, wills shall be construed as to trust and restricted land and trust personalty in accordance with the following rules:

"(1) CONSTRUCTION THAT WILL PASSES ALL PROPERTY.--A will shall be construed to apply to all trust and restricted land and trust personalty which the testator owned at his death, including any such land or personalty acquired after the execution of his will.

"(2) CLASS GIFTS.--

"(A) NO DIFFERENTIATION BETWEEN RELATIONSHIP BY BLOOD AND RELATIONSHIP BY AFFINITY.--Terms of relationship that do not differentiate relationships by blood from those by affinity, such as 'uncles', 'aunts', 'nieces', or 'nephews', are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as *1781 as 'brothers', 'sisters', 'nieces', or 'nephews', are construed to include both types of relationships.

"(B) MEANING OF 'HEIRS' AND 'NEXT OF KIN', ETC.; TIME OF ASCERTAINING CLASS.--A devise of trust or restricted interest in land or an interest in trust personalty to the testator's or another designated person's 'heirs', 'next of kin', 'relatives', or 'family' shall mean those persons, including the spouse, who would be entitled to take under the provisions of this Act for nontestamentary disposition. The class is to be ascertained as of the date of the testator's death.

"(C) TIME FOR ASCERTAINING CLASS.--In construing a devise to a class other than a class described in subparagraph (B), the class shall be ascertained as of the time the devise is to take effect in enjoyment. The surviving issue of any member of the class who is then dead shall take by right of representation the share which their deceased ancestor would have taken.

"(3) MEANING OF 'DIE WITHOUT ISSUE' AND SIMILAR PHRASES.--In any devise under this chapter, the words 'die without issue', 'die without leaving issue', 'have no issue', or words of a similar import shall be construed to mean that an individual had no lineal descendants in his lifetime or at his death, and not that there will be no lineal descendants at some future time.

"(4) PERSONS BORN OUT OF WEDLOCK.--In construing provisions of this chapter relating to lapsed and void devises, and in construing a devise to a person or persons described by relationship to the testator or to another, a person born out of wedlock shall be considered the child of the natural mother and also of the natural father.

"(5) LAPSED DEVISES.--Subject to the provisions of subsection (b), where the testator devises or bequeaths a trust or restricted interest in land or trust personalty to the testator's grandparents or to the lineal descendent of a grandparent, and the devisee or legatee dies before the testator leaving lineal descendants, such descendants shall take the interest so devised or bequeathed per stirpes.

"(6) VOID DEVISES.--Except as provided in paragraph (5), and if the disposition shall not be otherwise expressly provided for by a tribal probate code approved under section 206 (25 U.S.C. 2205), if a devise other than a residuary devise of a trust or restricted interest in land or trust personalty fails for any reason, such interest shall become part of the residue and pass, subject to the provisions of subsection (b), to the other residuary devisees, if any, in proportion to their respective shares or interests in the residue.

"(7) FAMILY CEMETERY PLOT.--If a family cemetery plot owned by the testator at his decease is not mentioned in the decedent's will, the ownership of the plot shall descend to his heirs as if he had died intestate.

"(j) HEIRSHIP BY KILLING.--

"(1) HEIR BY KILLING DEFINED.--As used in this subsection, 'heir by killing' means any person who knowingly participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent.

*1782 "(2) NO ACQUISITION OF PROPERTY BY KILLING.--Subject to any applicable Federal law relating to the devise or descent of trust or restricted land, no heir by killing shall in any way acquire any trust or restricted interests in land or interests in trust personalty as the result of the death of the decedent, but such property shall pass in accordance with this subsection.

"(3) DESCENT, DISTRIBUTION, AND RIGHT OF SURVIVORSHIP.--The heir by killing shall be deemed to have predeceased the decedent as to decedent's trust or restricted interests in land or trust personalty which would have passed from the decedent or his estate to such heir--

"(A) under intestate succession under this section;

"(B) under a tribal probate code, unless otherwise provided for;

"(C) as the surviving spouse;

"(D) by devise;

"(E) as a reversion or a vested remainder;

"(F) as a survivorship interest; and

"(G) as a contingent remainder or executory or other future interest.

"(4) JOINT TENANTS, JOINT OWNERS, AND JOINT OBLIGEEES.--

"(A) Any trust or restricted land or trust personalty held by only the heir by killing and the decedent as joint tenants, joint owners, or joint obligees shall pass upon the death of the decedent to his or her estate, as if the heir by killing had predeceased the decedent.

"(B) As to trust or restricted land or trust personalty held jointly by 3 or more persons, including both the heir by killing and the decedent, any income which would have accrued to the heir by killing as a result of the death of the decedent shall pass to the estate of the decedent as if the heir by killing had predeceased the decedent and any surviving joint tenants.

"(C) Notwithstanding any other provision of this subsection, the decedent's trust or restricted interest land or trust personalty that is held in a joint tenancy with the right of survivorship shall be severed from the joint tenancy as though the property held in the joint tenancy were to be severed and distributed equally among the joint tenants and the decedent's interest shall pass to his estate; the remainder of the interests shall remain in joint tenancy with right of survivorship among the surviving joint tenants.

"(5) LIFE ESTATE FOR THE LIFE OF ANOTHER.--If the estate is held by a third person whose possession expires upon the death of the decedent, it shall remain in such person's hands for the period of time following the decedent's death equal to the life expectancy of the decedent but for the killing.

"(6) PREADJUDICATION RULE.--

"(A) IN GENERAL.--If a person has been charged, whether by indictment, information, or otherwise by the United States, a tribe, or any State, with voluntary manslaughter or homicide in connection with a decedent's death, then any and all trust or restricted land or trust personalty that would otherwise pass to that person from the decedent's estate shall not pass or be distributed by *1783 the Secretary until the charges have been resolved in accordance with the provisions of this paragraph.

"(B) DISMISSAL OR WITHDRAWAL.--Upon dismissal or withdrawal of the charge, or upon a verdict of not guilty, such land and personalty shall pass as if no charge had been filed or made.

"(C) CONVICTION.--Upon conviction of such person, and the exhaustion of all appeals, if any, the trust and restricted land and trust personalty in the estate shall pass in accordance with this subsection.

"(7) BROAD CONSTRUCTION; POLICY OF SUBSECTION.--This subsection shall not be considered penal in nature, but shall be construed broadly in order to effect the policy that no person shall be allowed to profit by his own wrong, wherever committed.

"(k) GENERAL RULES GOVERNING PROBATE.--

"(1) SCOPE.--Except as provided under applicable Federal law or a tribal probate code approved under section 206,

the provisions of this subsection shall govern the probate of estates containing trust and restricted interests in land or trust personalty.

"(2) PRETERMITTED SPOUSES AND CHILDREN.--

"(A) SPOUSES.--

"(i) IN GENERAL.--Except as provided in clause (ii), if the surviving spouse of a testator married the testator after the testator executed the will of the testator, the surviving spouse shall receive the intestate share in the decedent's trust or restricted land and trust personalty that the spouse would have received if the testator had died intestate.

"(ii) EXCEPTION.--Clause (i) shall not apply to a trust or restricted interest land where--

"(I) the will of a testator is executed before the date of enactment of this subparagraph;

"(II)(aa) the spouse of a testator is a non-Indian; and

"(bb) the testator devised the interests in trust or restricted land of the testator to 1 or more Indians;

"(III) it appears, based on an examination of the will or other evidence, that the will was made in contemplation of the marriage of the testator to the surviving spouse;

"(IV) the will expresses the intention that the will is to be effective notwithstanding any subsequent marriage; or

"(V)(aa) the testator provided for the spouse by a transfer of funds or property outside the will; and

"(bb) an intent that the transfer be in lieu of a testamentary provision is demonstrated by statements of the testator or through a reasonable inference based on the amount of the transfer or other evidence.

"(iii) SPOUSES MARRIED AT THE TIME OF THE WILL.--Should the surviving spouse of the testator be omitted from the will of the testator, the surviving spouse *1784 shall be treated, for purposes of trust or restricted land or trust personalty in the testator's estate, in accordance with the provisions of section 207(a)(2)(A), as though there was no will but only if--

"(I) the testator and surviving spouse were continuously married without legal separation for the 5-year period preceding the decedent's death;

"(II) the testator and surviving spouse have a surviving child who is the child of the testator;

"(III) the surviving spouse has made substantial payments toward the purchase of, or improvements to, the trust or restricted land in such estate; or

"(IV) the surviving spouse is under a binding obligation to continue making loan payments for the trust or restricted land for a substantial period of time;

except that, if there is evidence that the testator adequately provided for the surviving spouse and any minor children by a transfer of funds or property outside of the will, this clause shall not apply.

"(B) CHILDREN.--

"(i) IN GENERAL.--If a testator executed the will of the testator before the birth or adoption of 1 or more children of the testator, and the omission of the children from the will is a product of inadvertence rather than an intentional omission, the children shall share in the trust or restricted interests in land and trust personalty as if the decedent had died intestate.

"(ii) ADOPTED HEIRS.--Any person recognized as an heir by virtue of adoption under the Act of July 8, 1940 (25

U.S.C. 372a), shall be treated as the child of a decedent under this subsection.

"(iii) ADOPTED-OUT CHILDREN.--

"(I) IN GENERAL.--For purposes of this Act, an adopted person shall not be considered the child or issue of his natural parents, except in distributing the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person. If a natural parent shall have married the adopting parent, the adopted person for purposes of inheritance by, from and through him shall also be considered the issue of such natural parent.

"(II) ELIGIBLE HEIR PURSUANT TO OTHER FEDERAL LAW OR TRIBAL LAW.-- Notwithstanding the provisions of subparagraph (B)(iii)(I), other Federal laws and laws of the Indian tribe with jurisdiction over the trust or restricted interest in land may otherwise define the inheritance rights of adopted-out children.

"(3) DIVORCE.--

"(A) SURVIVING SPOUSE.--

"(i) IN GENERAL.--An individual who is divorced from a decedent, or whose marriage to the decedent has been annulled, shall not be considered to be a surviving spouse unless, by virtue of a subsequent *1785 marriage, the individual is married to the decedent at the time of death of the decedent.

"(ii) SEPARATION.--A decree of separation that does not dissolve a marriage, and terminate the status of husband and wife, shall not be considered a divorce for the purpose of this subsection.

"(iii) NO EFFECT ON ADJUDICATIONS.--Nothing in clause (i) shall prevent the Secretary from giving effect to a property right settlement relating to a trust or restricted interest in land or an interest in trust personalty if 1 of the parties to the settlement dies before the issuance of a final decree dissolving the marriage of the parties to the property settlement.

"(B) EFFECT OF SUBSEQUENT DIVORCE ON A WILL OR DEVISE.--

"(i) IN GENERAL.--If, after executing a will, a testator is divorced or the marriage of the testator is annulled, as of the effective date of the divorce or annulment, any disposition of trust or restricted interests in land or of trust personalty made by the will to the former spouse of the testator shall be considered to be revoked unless the will expressly provides otherwise.

"(ii) PROPERTY.--Property that is prevented from passing to a former spouse of a decedent under clause (i) shall pass as if the former spouse failed to survive the decedent.

"(iii) PROVISIONS OF WILLS.--Any provision of a will that is considered to be revoked solely by operation of this subparagraph shall be revived by the remarriage of a testator to the former spouse of the testator.

"(4) AFTER-BORN HEIRS.--A child in gestation at the time of decedent's death will be treated as having survived the decedent if the child lives at least 120 hours after its birth.

"(5) ADVANCEMENTS OF TRUST PERSONALTY DURING LIFETIME; EFFECT ON DISTRIBUTION OF ESTATE.--

"(A) The trust personalty of a decedent who dies intestate as to all or a portion of his or her estate, given during the decedent's lifetime to a person eligible to be an heir of the decedent under subsection (b)(2)(B), shall be treated as an advancement against the heir's inheritance, but only if the decedent declared in a contemporaneous writing, or the heir acknowledged in writing, that the gift is an advancement or is to be taken into account in computing the division and distribution of the decedent's intestate estate.

"(B) For the purposes of this section, trust personalty advanced during the decedent's lifetime is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever

occurs first.

"(C) If the recipient of the trust personalty predeceases the decedent, the property shall not be treated as an advancement or taken into account in computing the division and distribution of the decedent's intestate estate unless the decedent's contemporaneous writing provides otherwise.

***1786** "(6) HEIRS RELATED TO DECEDENT THROUGH 2 LINES; SINGLE SHARE.--A person who is related to the decedent through 2 lines of relationship is entitled to only a single share of the trust or restricted land or trust personalty in the decedent's estate based on the relationship that would entitle such person to the larger share.

"(7) NOTICE.--

"(A) IN GENERAL.--To the maximum extent practicable, the Secretary shall notify each owner of trust and restricted land of the provisions of this Act.

"(B) COMBINED NOTICES.--The notice under subparagraph (A) may, at the discretion of the Secretary, be provided with the notice required under subsection (a) of section 8 of the American Indian Probate Reform Act of 2004.

"(8) RENUNCIATION OR DISCLAIMER OF INTERESTS.--

"(A) IN GENERAL.--Any person 18 years of age or older may renounce or disclaim an inheritance of a trust or restricted interest in land or in trust personalty through intestate succession or devise, either in full or subject to the reservation of a life estate (where the interest is an interest in land), in accordance with subparagraph (B), by filing a signed and acknowledged declaration with the probate decisionmaker prior to entry of a final probate order. No interest so renounced or disclaimed shall be considered to have vested in the renouncing or disclaiming heir or devisee, and the renunciation or disclaimer shall not be considered to be a transfer or gift of the renounced or disclaimed interest.

"(B) ELIGIBLE RECIPIENTS OF RENOUNCED OR DISCLAIMED INTERESTS; NOTICE TO RECIPIENTS.--

"(i) INTERESTS IN LAND.--A trust or restricted interest in land may be renounced or disclaimed only in favor of-

"(I) an eligible heir;

"(II) any person who would have been eligible to be a devisee of the interest in question pursuant to subsection (b)(1)(A) (but only in cases where the renouncing person is a devisee of the interest under a valid will); or

"(III) the Indian tribe with jurisdiction over the interest in question;

and the interest so renounced shall pass to its recipient in trust or restricted status.

"(ii) TRUST PERSONALTY.--An interest in trust personalty may be renounced or disclaimed in favor of any person who would be eligible to be a devisee of such an interest under subsection (b)(3) and shall pass to the recipient in accordance with the provisions of that subsection.

"(iii) UNAUTHORIZED RENUNCIATIONS AND DISCLAIMERS.--Unless renounced or disclaimed in favor of a person or Indian tribe eligible to receive the interest in accordance with the provisions of this subparagraph, a renounced or disclaimed interest shall pass as if the renunciation or disclaimer had not been made.

***1787** "(C) ACCEPTANCE OF INTEREST.--A renunciation or disclaimer of an interest filed in accordance with this paragraph shall be considered accepted when implemented in a final order by a decisionmaker, and shall thereafter be irrevocable. No renunciation or disclaimer of an interest shall be included in such order unless the recipient of the interest has been given notice of the renunciation or disclaimer and has not refused to accept the

interest. All disclaimers and renunciations filed and implemented in probate orders made effective prior to the date of enactment of the American Indian Probate Reform Act of 2004 are hereby ratified.

"(D) RULE OF CONSTRUCTION.--Nothing in this paragraph shall be construed to allow the renunciation of an interest that is subject to the provisions of section 207(a)(2)(D) (25 U.S.C. 2206(a)(2)(D)) in favor of more than 1 person.

"(9) CONSOLIDATION AGREEMENTS.--

"(A) IN GENERAL.--During the pendency of probate, the decisionmaker is authorized to approve written consolidation agreements effecting exchanges or gifts voluntarily entered into between the decedent's eligible heirs or devisees, to consolidate interests in any tract of land included in the decedent's trust inventory. Such agreements may provide for the conveyance of interests already owned by such heirs or devisees in such tracts, without having to comply with the Secretary's rules and requirements otherwise applicable to conveyances by deed of trust or restricted interests in land.

"(B) EFFECTIVE.--An agreement approved under subparagraph (A) shall be considered final when implemented in an order by a decisionmaker. The final probate order shall direct any changes necessary to the Secretary's land records, to reflect and implement the terms of the approved agreement.

"(C) EFFECT ON PURCHASE OPTION AT PROBATE.--Any interest in trust or restricted land that is subject to a consolidation agreement under this paragraph or section 207(e) (25 U.S.C. 2206(e)) shall not be available for purchase under section 207(p) (25 U.S.C. 2206(p)) unless the decisionmaker determines that the agreement should not be approved."

<< 25 USCA § 2204 >>

SEC. 4. PARTITION OF HIGHLY FRACTIONATED INDIAN LANDS.

Section 205 of the Indian Land Consolidation Act (25 U.S.C. 2204) (as amended by section 6(a)(2)) is amended by adding at the end the following:

"(d) PARTITION OF HIGHLY FRACTIONATED INDIAN LANDS.--

"(1) APPLICABILITY.--This subsection shall be applicable only to parcels of land (including surface and subsurface interests, except with respect to a subsurface interest that has been severed from the surface interest, in which case this subsection shall apply only to the surface interest) which the Secretary has determined, pursuant to paragraph (2)(B), to be parcels of highly fractionated Indian land.

***1788** "(2) REQUIREMENTS.--Each partition action under this subsection shall be conducted by the Secretary in accordance with the following requirements:

"(A) APPLICATION.--Upon receipt of any payment or bond required under subparagraph (B), the Secretary shall commence a process for partitioning a parcel of land by sale in accordance with the provisions of this subsection upon receipt of an application by--

"(i) the Indian tribe with jurisdiction over the subject land that owns an undivided interest in the parcel of land; or

"(ii) any person owning an undivided interest in the parcel of land who is eligible to bid at the sale of the parcel pursuant to subclause (II), (III), or (IV) of subparagraph (I)(i);

provided that no such application shall be valid or considered if it is received by the Secretary prior to the date that is 1 year after the date on which notice is published pursuant to section 8(a)(4) of the American Indian Probate Reform Act of 2004.

"(B) COSTS OF SERVING NOTICE AND PUBLICATION.--The costs of serving and publishing notice under

subparagraph (F) shall be borne by the applicant. Upon receiving written notice from the Secretary, the applicant must pay to the Secretary an amount determined by the Secretary to be the estimated costs of such service of notice and publication, or furnish a sufficient bond for such estimated costs within the time stated in the notice, failing which, unless an extension is granted by the Secretary, the Secretary shall not be required to commence the partition process under subparagraph (A) and may deny the application. The Secretary shall have the discretion and authority in any case to waive either the payment or the bond (or any portion of such payment or bond) otherwise required by this subparagraph, upon making a determination that such waiver will further the policies of this Act.

"(C) DETERMINATION.--Upon receipt of an application pursuant to subparagraph (A), the Secretary shall determine whether the subject parcel meets the requirements set forth in section 202(6) (25 U.S.C. 2201(6)) to be classified as a parcel of highly fractionated Indian land.

"(D) CONSENT REQUIREMENTS.--

"(i) IN GENERAL.--A parcel of land may be partitioned under this subsection only if the applicant obtains the written consent of--

"(I) the Indian tribe with jurisdiction over the subject land if such Indian tribe owns an undivided interest in the parcel;

"(II) any owner who, for the 3-year period immediately preceding the date on which the Secretary receives the application, has

"(aa) continuously maintained a bona fide residence on the parcel; or

"(bb) operated a bona fide farm, ranch, or other business on the parcel; and

"(III) the owners (including parents of minor owners and legal guardians of incompetent owners) *1789 of at least 50 percent of the undivided interests in the parcel, but only in cases where the Secretary determines that, based on the final appraisal prepared pursuant to subparagraph (F), any 1 owner's total undivided interest in the parcel (not including the interest of an Indian tribe or that of the owner requesting the partition) has a value in excess of \$1,500.

Any consent required by this clause must be in writing and acknowledged before a notary public (or other official authorized to make acknowledgments), and shall be approved by Secretary unless the Secretary has reason to believe that the consent was obtained as a result of fraud or undue influence.

"(ii) CONSENT BY THE SECRETARY ON BEHALF OF CERTAIN INDIVIDUALS.--For the purposes of clause (i)(III), the Secretary may consent on behalf of--

"(I) undetermined heirs of trust or restricted interests and owners of such interests who are minors and legal incompetents having no parents or legal guardian; and

"(II) missing owners or owners of trust or restricted interests whose whereabouts are unknown, but only after a search for such owners has been completed in accordance with the provisions of this subsection.

"(E) APPRAISAL.--After the Secretary has determined that the subject parcel is a parcel of highly fractionated Indian land pursuant to subparagraph (C), the Secretary shall cause to be made, in accordance with the provisions of this Act for establishing fair market value, an appraisal of the fair market value of the subject parcel.

"(F) NOTICE TO OWNERS ON COMPLETION OF APPRAISAL.--Upon completion of the appraisal, the Secretary shall give notice of the requested partition and appraisal to all owners of undivided interests in the parcel, in accordance with principles of due process. Such notice shall include the following requirements:

"(i) WRITTEN NOTICE.--The Secretary shall attempt to give each owner written notice of the partition action stating the following:

"(I) That a proceeding to partition the parcel of land by sale has been commenced.

"(II) The legal description of the subject parcel.

"(III) The owner's ownership interest in the subject parcel as evidenced by the Secretary's records as of the date that owners are determined in accordance with clause (ii).

"(IV) The results of the appraisal.

"(V) The owner's right to receive a copy of the appraisal upon written request.

"(VI) The owner's right to comment on or object to the proposed partition and the appraisal.

"(VII) That the owner must timely comment on or object in writing to the proposed partition or the appraisal, in order to receive notice of approval of the appraisal and right to appeal.

***1790** "(VIII) The date by which the owner's written comments or objections must be received, which shall not be less than 90 days after the date that the notice is mailed under this clause or last published under clause (ii)(II).

"(IX) The address for requesting copies of the appraisal and for submitting written comments or objections.

"(X) The name and telephone number of the official to be contacted for purposes of obtaining information regarding the proceeding, including the time and date of the auction of the land or the date for submitting sealed bids.

"(XI) Any other information the Secretary deems to be appropriate.

"(ii) MANNER OF SERVICE.--

"(I) SERVICE BY CERTIFIED MAIL.--The Secretary shall use due diligence to provide all owners of interests in the subject parcel, as evidenced by the Secretary's records at the time of the determination under subparagraph (C), with actual notice of the partition proceedings by mailing a copy of the written notice described in clause (i) by certified mail, restricted delivery, to each such owner at the owner's last known address. For purposes of this subsection, owners shall be determined from the Secretary's land title records as of the date of the determination under subparagraph (C) or a date that is not more than 90 days prior to the date of mailing under this clause, whichever is later. In the event the written notice to an owner is returned undelivered, the Secretary shall attempt to obtain a current address for such owner by conducting a reasonable search (including a reasonable search of records maintained by local, State, Federal and tribal governments and agencies) and by inquiring with the Indian tribe with jurisdiction over the subject parcel, and, if different from that tribe, the Indian tribe of which the owner is a member, and, if successful in locating any such owner, send written notice by certified mail in accordance with this subclause.

"(II) NOTICE BY PUBLICATION.--The Secretary shall give notice by publication of the partition proceedings to all owners that the Secretary was unable to serve pursuant to subclause (I), and to unknown heirs and assigns by--

"(aa) publishing the notice described in clause (i) at least 2 times in a newspaper of general circulation in the county or counties where the subject parcel of land is located or, if there is an Indian tribe with jurisdiction over the parcel of land and that tribe publishes a tribal newspaper or newsletter at least once every month, 1 time in such newspaper of ***1791** general circulation and 1 time in such tribal newspaper or newsletter;

"(bb) posting such notice in a conspicuous place in the tribal headquarters or administration building (or such other tribal building determined by the Secretary to be most appropriate for giving public notice) of the Indian tribe with jurisdiction over the parcel of land, if any; and

"(cc) in addition to the foregoing, in the Secretary's discretion, publishing notice in any other place or means that the Secretary determines to be appropriate.

"(G) REVIEW OF COMMENTS ON APPRAISAL.--

"(i) IN GENERAL.--After reviewing and considering comments or information timely submitted by any owner of an interest in the parcel in response to the notice required under subparagraph (F), the Secretary may, consistent with the provisions of this Act for establishing fair market value--

"(I) order a new appraisal; or

"(II) approve the appraisal;

provided that if the Secretary orders a new appraisal under subclause (I), notice of the new appraisal shall be given as specified in clause (ii).

"(ii) NOTICE.--Notice shall be given--

"(I) in accordance with subparagraph (H), where the new appraisal results in a higher valuation of the land; or

"(II) in accordance with subparagraph (F)(ii), where the new appraisal results in a lower valuation of the land.

"(H) NOTICE TO OWNERS OF APPROVAL OF APPRAISAL AND RIGHT TO APPEAL.--Upon making the determination under subparagraph (G), the Secretary shall provide to the Indian tribe with jurisdiction over the subject land and to all persons who submitted written comments on or objections to the proposed partition or appraisal, a written notice to be served on such tribe and persons by certified mail. Such notice shall state--

"(i) the results of the appraisal;

"(ii) that the owner has the right to review a copy of the appraisal upon request;

"(iii) that the land will be sold for not less than the appraised value, subject to the consent requirements under paragraph (2)(D);

"(iv) the time of the sale or for submitting bids under subparagraph (I);

"(v) that the owner has the right, under the Secretary's regulations governing administrative appeals, to pursue an administrative appeal from--

"(I) the determination that the land may be partitioned by sale under the provisions of this section; and

"(II) the Secretary's order approving the appraisal;

***1792** "(vi) the date by which an administrative appeal must be taken, a citation to the provisions of the Secretary's regulations that will govern the owner's appeal, and any other information required by such regulations to be given to parties affected by adverse decisions of the Secretary;

"(vii) in cases where the Secretary determines that any person's undivided trust or restricted interest in the parcel exceeds \$1,500 pursuant to paragraph (2)(D)(iii), that the Secretary has authority to consent to the partition on behalf of undetermined heirs of trust or restricted interests in the parcel and owners of such interests whose whereabouts are unknown; and

"(viii) any other information the Secretary deems to be appropriate.

"(I) SALE TO ELIGIBLE PURCHASER.--

"(i) IN GENERAL.--Subject to clauses (ii) and (iii) and the consent requirements of paragraph (2)(D), the Secretary shall, after providing notice to owners under subparagraph (H), including the time and place of sale or for receiving sealed bids, at public auction or by sealed bid (whichever of such methods of sale the Secretary determines to be more appropriate under the circumstances) sell the parcel of land by competitive bid for not less than the final appraised fair market value to the highest bidder from among the following eligible bidders:

"(I) The Indian tribe, if any, with jurisdiction over the trust or restricted interests in the parcel being sold.

"(II) Any person who is a member, or is eligible to be a member, of the Indian tribe described in subclause (I).

"(III) Any person who is a member, or is eligible to be a member, of an Indian tribe but not of the tribe described in subclause (I), but only if such person already owns an undivided interest in the parcel at the time of sale.

"(IV) Any lineal descendent of the original allottee of the parcel who is a member or is eligible to be a member of an Indian tribe or, with respect to a parcel located in the State of California that is not within an Indian tribe's reservation or not otherwise subject to the jurisdiction of an Indian tribe, who is a member, or eligible to be a member, of an Indian tribe or owns a trust or restricted interest in the parcel.

"(ii) RIGHT TO MATCH HIGHEST BID.--If the highest bidder is a person who is only eligible to bid under clause (i)(III), the Indian tribe that has jurisdiction over the parcel, if any, shall have the right to match the highest bid and acquire the parcel, but only if--

"(I) prior to the date of the sale, the governing body of such tribe has adopted a tribal law or resolution reserving its right to match the bids of such nonmember bidders in partition sales *1793 under this subsection and delivered a copy of such law or resolution to the Secretary; and

"(II) the parcel is not acquired under clause (iii).

"(iii) RIGHT TO PURCHASE.--Any person who is a member, or eligible to be a member, of the Indian tribe with jurisdiction over the trust or restricted interests in the parcel being sold and is, as of the time of sale under this subparagraph, the owner of the largest undivided interest in the parcel shall have a right to purchase the parcel by tendering to the Secretary an amount equal to the highest sufficient bid submitted at the sale, less that amount of the bid attributable to such owner's share, but only if--

"(I) the owner submitted a sufficient bid at the sale;

"(II) the owner's total undivided interest in the parcel immediately prior to the sale was--

"(aa) greater than the undivided interest held by any other co-owners, except where there are 2 or more co-owners whose interests are of equal size but larger than the interests of all other co-owners and such owners of the largest interests have agreed in writing that 1 of them may exercise the right of purchase under this clause; and

"(bb) equal to or greater than 20 percent of the entire undivided ownership of the parcel;

"(III) within 3 days following the date of the auction or for receiving sealed bids, and in accordance with the regulations adopted to implement this section, the owner delivers to the Secretary a written notice of intent to exercise the owner's rights under this clause; and

"(IV) such owner tenders the amount of the purchase price required under this clause--

"(aa) not less than 30 days after the date of the auction or time for receiving sealed bids; and

"(bb) in accordance with any requirements of the regulations promulgated to implement this section.

"(iv) INTEREST ACQUIRED.--A purchaser of a parcel of land under this subparagraph shall acquire title to the parcel in trust or restricted status, free and clear of any and all claims of title or ownership of all persons or entities (not including the United States) owning or claiming to own an interest in such parcel prior to the time of sale.

"(J) PROCEEDS OF SALE.--

"(i) Subject to clauses (ii) and (iii), the Secretary shall distribute the proceeds of sale of a parcel of land under the provisions of this section to the owners of interests in such parcel in proportion to their respective ownership interests.

***1794** "(ii) Proceeds attributable to the sale of trust or restricted interests shall be maintained in accounts as trust personalty.

"(iii) Proceeds attributable to the sale of interests of owners whose whereabouts are unknown, of undetermined heirs, and of other persons whose ownership interests have not been recorded shall be held by the Secretary until such owners, heirs, or other persons have been determined, at which time such proceeds shall be distributed in accordance with clauses (i) and (ii).

"(K) LACK OF BIDS OR CONSENT.--

"(i) LACK OF BIDS.--If no bidder described in subparagraph (I) presents a bid that equals or exceeds the final appraised value, the Secretary may either--

"(I) purchase the parcel of land for its appraised fair market value on behalf of the Indian tribe with jurisdiction over the land, subject to the lien and procedures provided under section 214(b) (25 U.S.C. 2213(b)); or

"(II) terminate the partition process.

"(ii) LACK OF CONSENT.--If an applicant fails to obtain any applicable consent required under the provisions of subparagraph (D) by the date established by the Secretary prior to the proposed sale, the Secretary may either extend the time for obtaining any such consent or deny the request for partition.

"(3) ENFORCEMENT.--

"(A) IN GENERAL.--If a partition is approved under this subsection and an owner of an interest in the parcel of land refuses to surrender possession in accordance with the partition decision, or refuses to execute any conveyance necessary to implement the partition, then any affected owner or the United States may--

"(i) commence a civil action in the United States district court for the district in which the parcel of land is located; and

"(ii) request that the court issue an order for ejectment or any other appropriate remedy necessary for the partition of the land by sale.

"(B) FEDERAL ROLE.--With respect to any civil action brought under subparagraph (A)--

"(i) the United States--

"(I) shall receive notice of the civil action; and

"(II) may be a party to the civil action; and

"(ii) the civil action shall not be dismissed, and no relief requested shall be denied, on the ground that the civil action is against the United States or that the United States is a necessary and indispensable party.

"(4) GRANTS AND LOANS.--The Secretary may provide grants and low interest loans to successful bidders at sales authorized by this subsection, provided that--

"(A) the total amount of such assistance in any such sale shall not exceed 20 percent of the appraised value of the parcel of land sold; and

***1795** "(B) the grant or loan funds provided shall only be applied toward the purchase price of the parcel of land sold.

"(5) REGULATIONS.--The Secretary is authorized to adopt such regulations as may be necessary to implement the provisions of this subsection. Such regulations shall include provisions for giving notice of sales to prospective

purchasers eligible to submit bids at sales conducted under paragraph (2)(I).".

<< 25 USCA § 2220 >>

SEC. 5. OWNER-MANAGED INTERESTS.

The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended by adding at the end the following:

"SEC. 221. OWNER-MANAGED INTERESTS.

"(a) PURPOSE.--The purpose of this section is to provide a means for the co-owners of trust or restricted interests in a parcel of land to enter into surface leases of such parcel for certain purposes without approval of the Secretary.

"(b) MINERAL INTERESTS.--Nothing in this section shall be construed to limit or otherwise affect the application of any Federal law requiring the Secretary to approve mineral leases or other agreements for the development of the mineral interest in trust or restricted land.

"(c) OWNER MANAGEMENT.--

"(1) IN GENERAL.--Notwithstanding any provision of Federal law requiring the Secretary to approve individual Indian leases of individual Indian trust or restricted land, where the owners of all of the undivided trust or restricted interests in a parcel of land have submitted applications to the Secretary pursuant to subsection (a), and the Secretary has approved such applications under subsection (d), such owners may, without further approval by the Secretary, enter into a lease of the parcel for agricultural purposes for a term not to exceed 10 years.

"(2) RULE OF CONSTRUCTION.--No such lease shall be effective until it has been executed by the owners of all undivided trust or restricted interests in the parcel.

"(d) APPROVAL OF APPLICATIONS FOR OWNER MANAGEMENT.--

"(1) IN GENERAL.--Subject to the provisions of paragraph (2), the Secretary shall approve an application for owner management submitted by a qualified applicant pursuant to this section unless the Secretary has reason to believe that the applicant is submitting the application as the result of fraud or undue influence. No such application shall be valid or considered if it is received by the Secretary prior to the date that is 1 year after the date on which notice is published pursuant to section 8(a)(4) of the American Indian Probate Reform Act of 2004.

"(2) COMMENCEMENT OF OWNER-MANAGED STATUS.--Notwithstanding the approval of 1 or more applications pursuant to paragraph (1), no trust or restricted interest in a parcel of land shall acquire owner-managed status until applications for all of the trust or restricted interests in such parcel of land have been submitted to and approved by the Secretary pursuant to this section.

"(e) VALIDITY OF LEASES.--No lease of trust or restricted interests in a parcel of land that is owner-managed under this section shall be valid or enforceable against the owners of such *1796 interests, or against the land, the interest or the United States, unless such lease--

"(1) is consistent with, and entered into in accordance with, the requirements of this section; or

"(2) has been approved by the Secretary in accordance with other Federal laws applicable to the leasing of trust or restricted land.

"(f) LEASE REVENUES.--The Secretary shall not be responsible for the collection of, or accounting for, any lease revenues accruing to any interests under a lease authorized by subsection (e), so long as such interest is in owner-managed status under the provisions of this section.

"(g) JURISDICTION.--

"(1) JURISDICTION UNAFFECTED BY STATUS.--The Indian tribe with jurisdiction over an interest in trust or restricted land that becomes owner-managed pursuant to this section shall continue to have jurisdiction over the interest to the same extent and in all respects that such tribe had prior to the interest acquiring owner-managed status.

"(2) PERSONS USING LAND.--Any person holding, leasing, or otherwise using such interest in land shall be considered to consent to the jurisdiction of the Indian tribe referred to in paragraph (1), including such tribe's laws and regulations, if any, relating to the use, and any effects associated with the use, of the interest.

"(h) CONTINUATION OF OWNER-MANAGED STATUS; REVOCATION.--

"(1) IN GENERAL.--Subject to the provisions of paragraph (2), after the applications of the owners of all of the trust or restricted interests in a parcel of land have been approved by the Secretary pursuant to subsection (d), each such interest shall continue in owner-managed status under this section notwithstanding any subsequent conveyance of the interest in trust or restricted status to another person or the subsequent descent of the interest in trust or restricted status by testate or intestate succession to 1 or more heirs.

"(2) REVOCATION.--Owner-managed status of an interest may be revoked upon written request of the owners (including the parents or legal guardians of minors or incompetent owners) of all trust or restricted interests in the parcel, submitted to the Secretary in accordance with regulations adopted under subsection (l). The revocation shall become effective as of the date on which the last of all such requests has been delivered to the Secretary.

"(3) EFFECT OF REVOCATION.--Revocation of owner-managed status under paragraph (2) shall not affect the validity of any lease made in accordance with the provisions of this section prior to the effective date of the revocation, provided that, after such revocation becomes effective, the Secretary shall be responsible for the collection of, and accounting for, all future lease revenues accruing to the trust or restricted interests in the parcel from and after such effective date.

"(i) DEFINED TERMS.--

"(1) For purposes of subsection (d)(1), the term 'qualified applicant' means--

"(A) a person over the age of 18 who owns a trust or restricted interest in a parcel of land; and

*1797 "(B) the parent or legal guardian of a minor or incompetent person who owns a trust or restricted interest in a parcel of land.

"(2) For purposes of this section, the term 'owner-managed status' means, with respect to a trust or restricted interest, that--

"(A) the interest is a trust or restricted interest in a parcel of land for which applications covering all trust or restricted interests in such parcel have been submitted to and approved by the Secretary pursuant to subsection (d);

"(B) the interest may be leased without approval of the Secretary pursuant to, and in a manner that is consistent with, the requirements of this section; and

"(C) no revocation has occurred under subsection (h)(2).

"(j) SECRETARIAL APPROVAL OF OTHER TRANSACTIONS.--Except with respect to the specific lease transaction described in paragraph (1) of subsection (c), interests that acquire owner-managed status under the provisions of this section shall continue to be subject to all Federal laws requiring the Secretary to approve transactions involving trust or restricted land (including leases with terms of a duration in excess of 10 years) that would otherwise apply to such interests if the interests had not acquired owner-managed status under this section.

"(k) EFFECT OF SECTION.--Subject to subsections (c), (f), and (h), nothing in this section diminishes or otherwise affects any authority or responsibility of the Secretary with respect to an interest in trust or restricted land."

SEC. 6. ADDITIONAL AMENDMENTS.

(a) IN GENERAL.--The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended--

<< 25 USCA § 2204 >>

(1) in the second sentence of section 205(a) (25 U.S.C. 2204(a)), by striking "over 50 per centum of the undivided interests" and inserting "undivided interests equal to at least 50 percent of the undivided interest";

<< 25 USCA § 2206 >>

(2) in section 207 (25 U.S.C. 2206), by adding a subsection at the end as follows:

"(p) PURCHASE OPTION AT PROBATE.--

"(1) IN GENERAL.--The trust or restricted interests in a parcel of land in the decedent's estate may be purchased at probate in accordance with the provisions of this subsection.

"(2) SALE OF INTEREST AT FAIR MARKET VALUE.--Subject to paragraph (3), the Secretary is authorized to sell trust or restricted interests in land subject to this subsection, including the interest that a surviving spouse would otherwise receive under section 207(a)(2) (A) or (D), at no less than fair market value, as determined in accordance with the provisions of this Act, to any of the following eligible purchasers:

"(A) Any other eligible heir taking an interest in the same parcel of land by intestate succession or the decedent's other devisees of interests in the same parcel who are eligible to receive a devise under section 207(b)(1)(A).

"(B) All persons who own undivided trust or restricted interests in the same parcel of land involved in the probate proceeding.

***1798** "(C) The Indian tribe with jurisdiction over the interest, or the Secretary on behalf of such Indian tribe.

"(3) REQUEST TO PURCHASE; AUCTION; CONSENT REQUIREMENTS.--No sale of an interest in probate shall occur under this subsection unless--

"(A) an eligible purchaser described in paragraph (2) submits a written request to purchase prior to the distribution of the interest to heirs or devisees of the decedent and in accordance with any regulations of the Secretary; and

"(B) except as provided in paragraph (5), the heirs or devisees of such interest, and the decedent's surviving spouse, if any, receiving a life estate under section 207(a)(2) (A) or (D) consent to the sale.

If the Secretary receives more than 1 request to purchase the same interest, the Secretary shall sell the interest by public auction or sealed bid (as determined by the Secretary) at not less than the appraised fair market value to the eligible purchaser submitting the highest bid.

"(4) APPRAISAL AND NOTICE.--Prior to the sale of an interest pursuant to this subsection, the Secretary shall--

"(A) appraise the interest at its fair market value in accordance with this Act;

"(B) provide eligible heirs, other devisees, and the Indian tribe with jurisdiction over the interest with written notice, sent by first class mail, that the interest is available for purchase in accordance with this subsection; and

"(C) if the Secretary receives more than 1 request to purchase the interest by a person described in subparagraph (B), provide notice of the manner (auction or sealed bid), time and place of the sale, a description, and the appraised fair market value, of the interest to be sold--

"(i) to the heirs or other devisees and the Indian tribe with jurisdiction over the interest, by first class mail; and

"(ii) to all other eligible purchasers, by posting written notice in at least 5 conspicuous places in the vicinity of the place of hearing.

"(5) SMALL UNDIVIDED INTERESTS IN INDIAN LANDS.--

"(A) IN GENERAL.--Subject to subparagraph (B), the consent of a person who is an heir otherwise required under paragraph (3)(B) shall not be required for the auction and sale of an interest at probate under this subsection if--

"(i) the interest is passing by intestate succession; and

"(ii) prior to the auction the Secretary determines in the probate proceeding that the interest passing to such heir represents less than 5 percent of the entire undivided ownership of the parcel of land as evidenced by the Secretary's records as of the time the determination is made.

"(B) EXCEPTION.--Notwithstanding subparagraph (A), the consent of such heir shall be required for the sale at probate of the heir's interest if, at the time of the decedent's death, the heir was residing on the parcel of land of which the interest to be sold was a part.

***1799** "(6) DISTRIBUTION OF PROCEEDS.--Proceeds from the sale of interests under this subsection shall be distributed to the heirs, devisees, or spouse whose interest was sold in accordance with the values of their respective interests. The proceeds attributable to an heir or devisee shall be held in an account as trust personalty if the interest sold would have otherwise passed to the heir or devisee in trust or restricted status.";

(3) in section 206 (25 U.S.C. 2205)--

<< 25 USCA § 2205 >>

(A) in subsection (a), by striking paragraph (3) and inserting the following:

"(3) TRIBAL PROBATE CODES.--Except as provided in any applicable Federal law, the Secretary shall not approve a tribal probate code, or an amendment to such a code, that prohibits the devise of an interest in trust or restricted land to--

"(A) an Indian lineal descendant of the original allottee; or

"(B) an Indian who is not a member of the Indian tribe with jurisdiction over such an interest;

unless the code provides for--

"(i) the renouncing of interests to eligible devisees in accordance with the code;

"(ii) the opportunity for a devisee who is the spouse or lineal descendant of a testator to reserve a life estate without regard to waste; and

"(iii) payment of fair market value in the manner prescribed under subsection (c)(2)."; and

(B) in subsection (c)--

<< 25 USCA § 2205 >>

(i) in paragraph (1)--

(I) by striking the paragraph heading and inserting the following:

"(1) AUTHORITY.--

"(A) IN GENERAL.--";

(II) in the first sentence of subparagraph (A) (as redesignated by clause (i)), by striking "section 207(a)(6)(A) of this title" and inserting "section 207(b)(2)(A)(ii) of this title"; and

(III) by striking the last sentence and inserting the following:

"(B) TRANSFER.--The Secretary shall transfer payments received under subparagraph (A) to any person or persons who would have received an interest in land if the interest had not been acquired by the Indian tribe in accordance with this paragraph."; and

(ii) in paragraph (2)--

(I) in subparagraph (A)--

<< 25 USCA § 2205 >>

(aa) by striking the subparagraph heading and all that follows through "Paragraph (1) shall not apply" and inserting the following:

"(A) INAPPLICABILITY TO CERTAIN INTERESTS.--

"(i) IN GENERAL.--Paragraph (1) shall not apply";

<< 25 USCA § 2205 >>

(bb) in clause (i) (as redesignated by item (aa)), by striking "if, while" and inserting the following: "if--

"(I) while";

<< 25 USCA § 2205 >>

(cc) by striking the period at the end and inserting "; or"; and

<< 25 USCA § 2205 >>

(dd) by adding at the end the following:

***1800** "(II)(aa) the interest is part of a family farm that is devised to a member of the family of the decedent; and

"(bb) the devisee agrees that the Indian tribe with jurisdiction over the land will have the opportunity to acquire the interest for fair market value if the interest is offered for sale to a person or entity that is not a member of the family of the owner of the land.

"(ii) RECORDING OF INTEREST.--On request by the Indian tribe described in clause (i)(II)(bb), a restriction relating to the acquisition by the Indian tribe of an interest in a family farm involved shall be recorded as part of the deed relating to the interest involved.

"(iii) MORTGAGE AND FORECLOSURE.--Nothing in clause (i)(II) limits--

"(I) the ability of an owner of land to which that clause applies to mortgage the land; or

"(II) the right of the entity holding such a mortgage to foreclose or otherwise enforce such a mortgage agreement in accordance with applicable law.

"(iv) DEFINITION OF 'MEMBER OF THE FAMILY'.--In this paragraph, the term 'member of the family', with

respect to a decedent or landowner, means--

"(I) a lineal descendant of a decedent or landowner;

"(II) a lineal descendant of the grandparent of a decedent or landowner;

"(III) the spouse of a descendant or landowner described in subclause (I) or (II); and

"(IV) the spouse of a decedent or landowner.'; and

<< 25 USCA § 2205 >>

(II) in subparagraph (B), by striking "subparagraph (A)" and all that follows through "207(a)(6)(B) of this title" and inserting "paragraph (1)";

<< 25 USCA § 2206 >>

(4) in section 207 (25 U.S.C. 2206), by striking subsection (g);

(5) in section 213 (25 U.S.C. 2212)--

<< 25 USCA § 2212 >>

(A) by striking the section heading and inserting the following:

"SEC. 2212. FRACTIONAL INTEREST ACQUISITION PROGRAM.';

(B) in subsection (a), by--

<< 25 USCA § 2212 >>

(i) adding in paragraph (1) "or from an heir during probate in accordance with section 207(p) (25 U.S.C. 2206(p))" after "owner,"; and

<< 25 USCA § 2212 >>

(ii) striking "(2) AUTHORITY OF SECRETARY.--" and all that follows through "the Secretary shall submit" and inserting the following:

"(2) AUTHORITY OF SECRETARY.--The Secretary shall submit"; and

<< 25 USCA § 2212 >>

(iii) by striking "whether the program to acquire fractional interests should be extended or altered to make resources" and inserting "how the fractional ***1801** interest acquisition program should be enhanced to increase the resources made";

<< 25 USCA § 2212 >>

(C) in subsection (b), by striking paragraph (4) and inserting the following:

"(4) shall minimize the administrative costs associated with the land acquisition program through the use of policies and procedures designed to accommodate the voluntary sale of interests under this section, notwithstanding the existence of any otherwise applicable policy, procedure, or regulation, through the elimination of duplicate--

"(A) conveyance documents;

"(B) administrative proceedings; and

"(C) transactions.";

(D) in subsection (c)--

<< 25 USCA § 2212 >>

(i) in paragraph (1)--

(I) in subparagraph (A), by striking "at least 5 percent of the" and inserting in its place "an";

(II) in subparagraph (A), by inserting "in such parcel" following "the Secretary shall convey an interest";

(III) in subparagraph (A), by striking "landowner upon payment" and all that follows and inserting the following:
"landowner--

"(i) on payment by the Indian landowner of the amount paid for the interest by the Secretary; or

"(ii) if--

"(I) the Indian referred to in this subparagraph provides assurances that the purchase price will be paid by pledging revenue from any source, including trust resources; and

"(II) the Secretary determines that the purchase price will be paid in a timely and efficient manner."; and

(IV) in subparagraph (B), by inserting before the period at the end the following: "unless the interest is subject to a foreclosure of a mortgage in accordance with the Act of March 29, 1956 (25 U.S.C. 483a)"; and

<< 25 USCA § 2212 >>

(ii) in paragraph (3), by striking "10 percent or more of the undivided interests" and inserting "an undivided interest"; and

<< 25 USCA § 2212 >>

(E) by adding at the end of the section:

"(d) AUTHORIZATION OF APPROPRIATIONS.--There is authorized to be appropriated to carry out this section \$75,000,000 for fiscal year 2005, \$95,000,000 for fiscal year 2006, and \$145,000,000 for each of fiscal years 2007 through 2010.";

<< 25 USCA § 2213 >>

(6) in section 214 (25 U.S.C. 2213), by striking subsection (b) and inserting the following:

"(b) APPLICATION OF REVENUE FROM ACQUIRED INTERESTS TO LAND CONSOLIDATION PROGRAM.--

"(1) IN GENERAL.--The Secretary shall have a lien on any revenue accruing to an interest described in subsection (a) until the Secretary provides for the removal of the lien under paragraph (3), (4), or (5).

"(2) REQUIREMENTS.--

"(A) IN GENERAL.--Until the Secretary removes a lien from an interest in land under paragraph (1)--

***1802** "(i) any lease, resource sale contract, right-of-way, or other document evidencing a transaction affecting the interest shall contain a clause providing that all revenue derived from the interest shall be paid to the Secretary; and

"(ii) any revenue derived from any interest acquired by the Secretary in accordance with section 213 shall be deposited in the fund created under section 216.

"(B) APPROVAL OF TRANSACTIONS.--Notwithstanding section 16 of the Act of June 18, 1934 (commonly known as the 'Indian Reorganization Act') (25 U.S.C. 476), or any other provision of law, until the Secretary removes a lien from an interest in land under paragraph (1), the Secretary may approve a transaction covered under this section on behalf of an Indian tribe.

"(3) REMOVAL OF LIENS AFTER FINDINGS.--The Secretary may remove a lien referred to in paragraph (1) if the Secretary makes a finding that--

"(A) the costs of administering the interest from which revenue accrues under the lien will equal or exceed the projected revenues for the parcel of land involved;

"(B) in the discretion of the Secretary, it will take an unreasonable period of time for the parcel of land to generate revenue that equals the purchase price paid for the interest; or

"(C) a subsequent decrease in the value of land or commodities associated with the parcel of land make it likely that the interest will be unable to generate revenue that equals the purchase price paid for the interest in a reasonable time.

"(4) REMOVAL OF LIENS UPON PAYMENT INTO THE ACQUISITION FUND.--The Secretary shall remove a lien referred to in paragraph (1) upon payment of an amount equal to the purchase price of that interest in land into the Acquisition Fund created under section 2215 of this title, except where the tribe with jurisdiction over such interest in land authorizes the Secretary to continue the lien in order to generate additional acquisition funds.

"(5) OTHER REMOVAL OF LIENS.--The Secretary may, in consultation with tribal governments and other entities described in section 213(b)(3), periodically remove liens referred to in paragraph (1) from interests in land acquired by the Secretary.";

<< 25 USCA § 2214 >>

(7) in section 215 (25 U.S.C. 2214), in the last sentence, by striking "section 2212 of this title" and inserting "this Act";

(8) in section 216 (25 U.S.C. 2215)--

<< 25 USCA § 2215 >>

(A) in subsection (a), by striking paragraph (2) and inserting the following:

"(2) collect all revenues received from the lease, permit, or sale of resources from interests acquired under section 213 or paid by Indian landowners under section 213."; and

(B) in subsection (b)--

(i) in paragraph (1)--

<< 25 USCA § 2215 >>

(I) in the matter preceding subparagraph (A), by striking "Subject to paragraph (2), all" and inserting "All";

***1803**

<< 25 USCA § 2215 >>

(II) in subparagraph (A), by striking "and" at the end;

<< 25 USCA § 2215 >>

(III) in subparagraph (B), by striking the period at the end and inserting "; and"; and

<< 25 USCA § 2215 >>

(IV) by adding at the end the following:

"(C) be used to acquire undivided interests on the reservation from which the income was derived."; and

<< 25 USCA § 2215 >>

(ii) by striking paragraph (2) and inserting the following:

"(2) USE OF FUNDS.--The Secretary may use the revenue deposited in the Acquisition Fund under paragraph (1) to acquire some or all of the undivided interests in any parcels of land in accordance with section 205.";

(9) in section 217 (25 U.S.C. 2216)--

<< 25 USCA § 2216 >>

(A) in subsection (b)(1), by striking subparagraph (B) and inserting a new subparagraph (B) as follows:

"(B) WAIVER OF REQUIREMENT.--The requirement for an estimate of value under subparagraph (A) may be waived in writing by an owner of a trust or restricted interest in land either selling, exchanging, or conveying by gift deed for no or nominal consideration such interest--

"(i) to an Indian person who is the owner's spouse, brother, sister, lineal ancestor, lineal descendant, or collateral heir; or

"(ii) to an Indian co-owner or to the tribe with jurisdiction over the subject parcel of land, where the grantor owns a fractional interest that represents 5 percent or less of the parcel.";

<< 25 USCA § 2216 >>

(B) in subsection (e), by striking the matter preceding paragraph (1), and inserting "Notwithstanding any other provision of law, the names and mailing addresses of the owners of any interest in trust or restricted lands, and information on the location of the parcel and the percentage of undivided interest owned by each individual shall, upon written request, be made available to";

<< 25 USCA § 2216 >>

(C) in subsection (e)(1), by striking "Indian";

<< 25 USCA § 2216 >>

(D) in subsection (e)(3), by striking "prospective applicants for the leasing, use, or consolidation of" and inserting "any person that is leasing, using, or consolidating, or is applying to lease, use, or consolidate,"; and

<< 25 USCA § 2216 >>

(E) by striking subsection (f) and inserting the following:

"(f) PURCHASE OF LAND BY INDIAN TRIBE.--

"(1) IN GENERAL.--Except as provided in paragraph (2), before the Secretary approves an application to terminate the trust status or remove the restrictions on alienation from a parcel of, or interest in, trust or restricted land, the Indian tribe with jurisdiction over the parcel shall have the opportunity--

"(A) to match any offer contained in the application; or

"(B) in a case in which there is no purchase price offered, to acquire the interest in the parcel by paying the fair market value of the interest.

"(2) EXCEPTION FOR FAMILY FARMS.--

"(A) IN GENERAL.--Paragraph (1) shall not apply to a parcel of, or interest in, trust or restricted land that *1804 is part of a family farm that is conveyed to a member of the family of a landowner (as defined in section 206(c)(2)(A)(iv)) if the conveyance requires that in the event that the parcel or interest is offered for sale to an entity or person that is not a member of the family of the landowner, the Indian tribe with jurisdiction over the land shall be afforded the opportunity to purchase the interest pursuant to paragraph (1).

"(B) APPLICABILITY OF OTHER PROVISION.--Section 206(c)(2)(A) shall apply with respect to the recording and mortgaging of any trust or restricted land referred to in subparagraph (A).";

<< 25 USCA § 2218 >>

(10) in section 219(b)(1)(A) (25 U.S.C. 2218(b)(1)(A)), by striking "100" and inserting "90"; and

<< 25 USCA § 2218 >>

(11) in section 219, by adding at the end of the section:

"(g) OTHER LAWS.--Nothing in this Act shall be construed to supersede, repeal, or modify any general or specific statute authorizing the grant or approval of any type of land use transaction involving fractional interests in trust or restricted land.".

(b) DEFINITIONS.--Section 202 of the Indian Land Consolidation Act (25 U.S.C. 2201) is amended--

<< 25 USCA § 2201 >>

(1) by striking paragraph (2) and inserting the following:

"(2) 'Indian' means--

"(A) any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner (as of the date of enactment of the American Indian Probate Reform Act of 2004) of a trust or restricted interest in land;

"(B) any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder; and

"(C) with respect to the inheritance and ownership of trust or restricted land in the State of California pursuant to section 207, any person described in subparagraph (A) or (B) or any person who owns a trust or restricted interest in a parcel of such land in that State.";

<< 25 USCA § 2201 >>

(2) by striking paragraph (4) and inserting the following:

"(4) 'trust or restricted lands' means lands, title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation; and 'trust or restricted interest in land' or 'trust or restricted interest in a parcel of land' means an interest in land, title to which is held in trust by the United States for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation."; and

<< 25 USCA § 2201 >>

(3) by adding at the end the following:

"(6) 'parcel of highly fractionated Indian land' means a parcel of land that the Secretary, pursuant to authority under a provision of this Act, determines to have, as evidenced by the Secretary's records at the time of the determination--

"(A) 50 or more but less than 100 co-owners of undivided trust or restricted interests, and no 1 of such co-owners holds a total undivided trust or restricted interest in the parcel that is greater than 10 percent of the entire undivided ownership of the parcel; or

***1805** "(B) 100 or more co-owners of undivided trust or restricted interests;

"(7) 'land' means any real property, and includes within its meaning for purposes of this Act improvements permanently affixed to real property;

"(8) 'person' or 'individual' means a natural person;

"(9) 'eligible heirs' means, for purposes of section 207 (25 U.S.C. 2206), any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are--

"(A) Indian; or

"(B) lineal descendants within 2 degrees of consanguinity of an Indian; or

"(C) owners of a trust or restricted interest in a parcel of land for purposes of inheriting by descent, renunciation, or consolidation agreement under section 207 (25 U.S.C. 2206), another trust or restricted interest in such parcel from the decedent; and

"(10) 'without regard to waste' means, with respect to a life estate interest in land, that the holder of such estate is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen."

<< 25 USCA § 348 >>

(c) ISSUANCE OF PATENTS.--Section 5 of the Act of February 8, 1887 (25 U.S.C. 348), is amended by striking the second proviso and inserting the following: "Provided, That the rules of intestate succession under the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act) shall apply to that land for which patents have been executed and delivered:".

<< 25 USCA § 464 >>

(d) TRANSFERS OF RESTRICTED INDIAN LAND.--Section 4 of the Act of June 18, 1934 (25 U.S.C. 464), is amended in the first proviso by--

(1) striking ", in accordance with" and all that follows through "or in which the subject matter of the corporation is located,";

(2) striking ", except as provided by the Indian Land Consolidation Act" and all that follows through the colon; and

(3) inserting "in accordance with the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act):".

(e) ESTATE PLANNING.--

<< 25 USCA § 2206 >>

(1) CONDUCT OF ACTIVITIES.--Section 207(f)(1) of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.--

"(A) The activities conducted under this subsection shall be conducted in accordance with any applicable--

"(i) tribal probate code; or

"(ii) tribal land consolidation plan.

"(B) The Secretary shall provide estate planning assistance in accordance with this subsection, to the extent amounts are appropriated for such purpose."

<< 25 USCA § 2206 >>

(2) REQUIREMENTS.--Section 207(f)(2) of the Indian Land Consolidation Act (25 U.S.C. 2206(f)(2)) is amended by striking *1806 "and" at the end of subparagraph (A), redesignating subparagraph (B) as subparagraph (D), and adding the following:

"(B) dramatically increase the use of wills and other methods of devise among Indian landowners;

"(C) substantially reduce the quantity and complexity of Indian estates that pass intestate through the probate process, while protecting the rights and interests of Indian landowners; and".

<< 25 USCA § 2206 >>

(3) PROBATE CODE DEVELOPMENT AND LEGAL ASSISTANCE GRANTS.--Section 207(f)(3) of the Indian Land Consolidation Act (25 U.S.C. 2206(f)(3)) is amended by striking paragraph (3) and inserting the following:

"(3) PROBATE CODE DEVELOPMENT AND LEGAL ASSISTANCE GRANTS.--In carrying out this section, the Secretary may award grants to--

"(A) Indian tribes, for purposes of tribal probate code development and estate planning services to tribal members;

"(B) organizations that provide legal assistance services for Indian tribes, Indian organizations, and individual owners of interests in trust or restricted lands that are qualified as nonprofit organizations under section 501(c)(3) of the Internal Revenue Code of 1986 and provide such services pursuant to Federal poverty guidelines, for purposes of providing civil legal assistance to such Indian tribes, individual owners, and Indian organizations for the development of tribal probate codes, for estate planning services or for other purposes consistent with the services they provide to Indians and Indian tribes; and

"(C) in specific areas and reservations where qualified nonprofit organizations referred to in subparagraph (B) do not provide such legal assistance to Indian tribes, Indian organizations, or individual owners of trust or restricted land, to other providers of such legal assistance; that submit an application to the Secretary, in such form and manner as the Secretary may prescribe.

"(4) AUTHORIZATION FOR APPROPRIATIONS.--There is authorized to be appropriated such sums as may be necessary to carry out the provisions of paragraph (3)."

(4) NOTIFICATION TO LANDOWNERS.--Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by adding at the end the following:

"(l) NOTIFICATION TO LANDOWNERS.--After receiving written request by any owner of a trust or restricted interest in land, the Secretary shall provide to such landowner the following information with respect to each tract of trust or restricted land in which the landowner has an interest:

"(1) The location of the tract of land involved.

"(2) The identity of each other co-owner of interests in the parcel of land.

"(3) The percentage of ownership of each owner of an interest in the tract.

"(m) PILOT PROJECT FOR THE MANAGEMENT OF TRUST ASSETS OF INDIAN FAMILIES AND RELATIVES.--

"(1) DEVELOPMENT PILOT PROJECT.--The Secretary shall consult with tribes, individual landowner organizations, Indian advocacy organizations, and other interested parties to--

*1807 "(A) develop a pilot project for the creation of legal entities such as private or family trusts, partnerships corporations, or other organizations to improve, facilitate, and assist in the efficient management of interests in trust or restricted lands or funds owned by Indian family members and relatives; and

"(B) develop proposed rules, regulations, and guidelines to implement the pilot project, including--

"(i) the criteria for establishing such legal entities;

"(ii) reporting and other requirements that the Secretary determines to be appropriate for administering such entities; and

"(iii) provisions for suspending or revoking the authority of an entity to engage in activities relating to the management of trust or restricted assets under the pilot project in order to protect the interests of the beneficial owners of such assets.

"(2) PRIMARY PURPOSES; LIMITATION; APPROVAL OF TRANSACTIONS; PAYMENTS BY SECRETARY.--

"(A) PURPOSES.--The primary purpose of any entity organized under the pilot project shall be to improve, facilitate, and assist in the management of interests in trust or restricted land, held by 1 or more persons, in furtherance of the purposes of this Act.

"(B) LIMITATION.--The organization or activities of any entity under the pilot project shall not be construed to impair, impede, replace, abrogate, or modify in any respect the trust duties or responsibilities of the Secretary, nor shall anything in this subsection or in any rules, regulations, or guidelines developed under this subsection enable any private or family trustee of trust or restricted interests in land to exercise any powers over such interests greater than that held by the Secretary with respect to such interests.

"(C) SECRETARIAL APPROVAL OF TRANSACTIONS.--Any transaction involving the lease, use, mortgage or other disposition of trust or restricted land or other trust assets administered by or through an entity under the pilot project shall be subject to approval by the Secretary in accordance with applicable Federal law.

"(D) PAYMENTS.--The Secretary shall have the authority to make payments of income and revenues derived from trust or restricted land or other trust assets administered by or through an entity participating in the pilot project directly to the entity, in accordance with requirements of the regulations adopted pursuant to this subsection.

"(3) LIMITATIONS ON PILOT PROJECT.--

"(A) NUMBER OF ORGANIZATIONS.--The number of entities established under the pilot project authorized by this subsection shall not exceed 30.

"(B) REGULATIONS REQUIRED.--No entity shall commence activities under the pilot project authorized by this subsection until the Secretary has adopted final rules and regulations under paragraph (1)(B).

***1808** "(4) REPORT TO CONGRESS.--Prior to the expiration of the pilot project provided for under this subsection, the Secretary shall submit a report to Congress stating--

"(A) a description of the Secretary's consultation with Indian tribes, individual landowner associations, Indian advocacy organizations, and other parties consulted with regarding the development of rules and regulations for the creation and management of interests in trust and restricted lands under the pilot project;

"(B) the feasibility of accurately monitoring the performance of legal entities such as those involved in the pilot project, and the effectiveness of such entities as mechanisms to manage and protect trust assets;

"(C) the impact that the use of entities such as those in the pilot project may have with respect to the accomplishment of the goals of the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.); and

"(D) any recommendations that the Secretary may have regarding whether to adopt a permanent program as a management and consolidation measure for interests in trust or restricted lands.

"(n) NOTICE TO HEIRS.--Prior to holding a hearing to determine the heirs to trust or restricted property, or making a decision determining such heirs, the Secretary shall seek to provide actual written notice of the proceedings to all heirs. Such efforts shall include--

"(1) a search of publicly available records and Federal records, including telephone and address directories and including electronic search services or directories;

"(2) an inquiry with family members and co-heirs of the property;

"(3) an inquiry with the tribal government of which the owner is a member, and the tribal government with jurisdiction over the property, if any; and

"(4) if the property is of a value greater than \$2,000, engaging the services of an independent firm to conduct a missing persons search.

"(o) MISSING HEIRS.--

"(1) For purposes of this subsection and subsection (m), an heir may be presumed missing if--

"(A) such heir's whereabouts remain unknown 60 days after completion of notice efforts under subsection (m); and

"(B) in the proceeding to determine a decedent's heirs, the Secretary finds that the heir has had no contact with other heirs of the decedent, if any, or with the Department relating to trust or restricted land or other trust assets at any time during the 6-year period preceding the hearing to determine heirs.

"(2) Before the date for declaring an heir missing, any person may request an extension of time to locate such heir. The Secretary shall grant a reasonable extension of time for good cause.

"(3) An heir shall be declared missing only after a review of the efforts made in the heirship proceeding and a finding has been made that this subsection has been complied with.

***1809** "(4) An heir determined to be missing pursuant to this subsection shall be deemed to have predeceased the

decendent for purposes of descent and devise of trust or restricted land and trust personalty within that decedent's estate.".

SEC. 7. ANNUAL NOTICE AND FILING REQUIREMENT FOR OWNERS OF INTERESTS IN TRUST OR RESTRICTED LANDS.

The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended by adding at the end the following:

<< 25 USCA § 2221 >>

"SEC. 222. ANNUAL NOTICE AND FILING; CURRENT WHEREABOUTS OF INTEREST OWNERS.

"On at least an annual basis, the Secretary shall include along with other regular reports to owners of trust or restricted interests in land and individual Indian money account owners a change of name and address form by means of which the owner may confirm or update the owner's name and address. The change of name and address form shall include a section in which the owner may confirm and update the owner's name and address.".

<< 25 USCA § 2201 NOTE >>

SEC. 8. NOTICE; EFFECTIVE DATE.

(a) NOTICE.--

(1) IN GENERAL.--Not later than 180 days after the date of enactment of this Act, the Secretary shall notify Indian tribes and owners of trust or restricted lands of the amendments made by this Act.

(2) SPECIFICATIONS.--The notice required under paragraph (1) shall be designed to inform Indian owners of trust or restricted land of--

(A) the effect of this Act and the amendments made by this Act, with emphasis on the effect of the provisions of this Act and the amendments made by this Act, on the testate disposition and intestate descent of their interests in trust or restricted land;

(B) estate planning options available to the owners, including any opportunities for receiving estate planning assistance or advice;

(C) the use of negotiated sales, gift deeds, land exchanges, and other transactions for consolidating the ownership of land; and

(D) a toll-free telephone number to be used for obtaining information regarding the provisions of this Act and any trust assets of such owners.

(3) REQUIREMENTS.--The Secretary shall provide the notice required under paragraph (1)--

(A) by direct mail for those Indians with interests in trust and restricted lands for which the Secretary has an address for the interest holder;

(B) through the Federal Register;

(C) through local newspapers in areas with significant Indian populations, reservation newspapers, and newspapers that are directed at an Indian audience; and

(D) through any other means determined appropriate by the Secretary.

(4) CERTIFICATION.--After providing notice under this subsection, the Secretary shall--

(A) certify that the requirements of this subsection have been met; and

***1810** (B) publish notice of that certification in the Federal Register.

(b) EFFECTIVE DATE.--Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206), except subsections (e) and (f) of that section, shall not apply to the estate of an individual who dies before the date that is 1 year after the date on which the Secretary makes the certification required under subsection (a)(4).

<< 25 USCA § 2201 NOTE >>

SEC. 9. SEVERABILITY.

If any provision of this Act or of any amendment made by this Act, or the application of any such provision to any person or circumstance, is held to be invalid for any reason, the remainder of this Act and of amendments made by this Act, and the application of the provisions and of the amendments made by this Act to any other person or circumstance shall not be affected by such holding, except that each of subclauses (II), (III), and (IV) of section 205(d)(2)(I)(i) is deemed to be inseverable from the other 2, such that if any 1 of those 3 subclauses is held to be invalid for any reason, neither of the other 2 of such subclauses shall be given effect.

<< 25 USCA § 2201 NOTE >>

SEC. 10. REGULATIONS.

The Secretary is authorized to adopt such regulations as may be necessary to implement the provisions of this Act.

Approved October 27, 2004.

PL 108-374, 2004 S 1721

END OF DOCUMENT